

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of

Redevelopment of Spectrum to
Encourage Innovation in the Use
of New Telecommunications
Technologies

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) ET Docket No. 92-9
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To: The Commission

**STATEMENT IN SUPPORT OF
PETITION FOR CLARIFICATION AND/OR RECONSIDERATION**

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Dated: March 30, 1993

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**STATEMENT IN SUPPORT OF
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The American Petroleum Institute ("API"), by its attorneys, respectfully submits this Statement in Support ("Statement") of the Petition for Clarification and/or Reconsideration ("Petition") filed by the Utilities Telecommunications Council ("UTC") in the above-captioned proceeding.^{1/}

I. PRELIMINARY STATEMENT

1. The American Petroleum Institute is a national trade association representing over 200 companies involved in all aspects of the oil and gas industries, including

^{1/} 58 Fed. Reg. 13758 (March 15, 1993).

exploration, production, refining, marketing and pipeline transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies and legislative bodies. The Telecommunications Committee is API's primary committee concerned with telecommunications regulatory matters. It is supported by licensees that are authorized by the Commission to operate point-to-point microwave systems in the Private Operational-Fixed Microwave Service ("POFS") in the 1.85-1.99 GHz, 2.13-2.15 GHz and 2.18-2.20 GHz ("2 GHz") bands which are being reallocated by the Commission in this proceeding. These telecommunications facilities are used to support the search for and production of oil and natural gas, and also used to comply with regulations of various state and federal agencies including the U.S. Department of Transportation ("DOT") to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products. These privately-owned and operated systems are also employed to support the processing and refining of these energy sources, as well as for their ultimate delivery to industrial and residential customers. These facilities licensed to API's members are thus essential to the provision of our nation's energy sources.

2. API has participated in every phase of this proceeding and API remains concerned about the possible relocation of fixed microwave licensees from spectrum assignments which offer the reliable telecommunications capabilities necessary to perform sensitive petroleum and natural gas production and transportation functions. Accordingly, API is pleased to have this opportunity to submit this Statement in Support of UTC's Petition for Clarification and/or Reconsideration.

II. THE COMMISSION'S PROPOSED TRANSITION FRAMEWORK MUST PROTECT THE INTEGRITY OF INCUMBENT 2 GHz MICROWAVE SYSTEMS

3. API agrees with UTC that the transition framework adopted by the FCC may be workable, provided that certain details are clarified to ensure that the critical functions now performed by POFS facilities authorized in the 2 GHz bands will not be compromised by the transition to emerging technology operations.^{2/} Accordingly, in order to protect

^{2/} UTC Petition at 3. API also notes that confusion exists over whether the Commission actually adopted or merely proposed a transition framework. In a "Petition for Clarification or Reconsideration" filed in response to the Commission's First Report and Order and Third Notice of Proposed Rulemaking in this docket, fn. 3, infra, Apple Computer ("Apple") suggests that the Commission's language is not clear on actual adoption of transition rules, and further notes that if rules were adopted by the Agency, they should be held in abeyance until several key elements of the
(continued...)

2 GHz fixed microwave operations which the Commission itself has deemed essential,^{3/} the transition plan must ensure that incumbent microwave licensees will have continued access to adequate microwave spectrum in which to conduct such operations. Moreover, the Commission must ensure that 2 GHz replacement facilities remain privately owned by incumbent licensees, and the Agency must offer assurances that any construction and/or design of replacement facilities will remain within the control of displaced incumbent licensees.

A. Displaced Licensees Must Maintain Control of the Selection of Replacement Spectrum and/or Technologies

4. API agrees with UTC that no relocation of 2 GHz microwave incumbent licensees to non-microwave replacement facilities must occur unless specifically agreed to by the displaced licensee.^{4/} While fiber optic, satellite

2/(...continued)

transition plan could be further refined. Apple Petition at 3. API concurs with Apple that, until the Commission actually determines when the transition period will commence, the period's length, and whether a "minimum voluntary negotiation period" should be provided, any actual adoption of transition rules is premature.

3/ First Report and Order and Third Notice of Proposed Rulemaking ET Docket No. 92-9, 7 FCC Rcd 6886, 6889. (Hereinafter, "First R&O") (1992).

4/ UTC Petition at 3.

technology and other methods may, in some instances, provide an acceptable replacement service for an incumbent licensee's 2 GHz microwave link, in many situations alternative technologies will be inadequate to perform functions now conducted on 2 GHz spectrum with the necessary reliability to adequately protect the public.^{5/}

5. Accordingly, API is concerned that the present rules could be interpreted to allow an incumbent licensee

construction of privately owned 2 GHz POFS systems is that such systems offer a more reliable telecommunications capability than is available from common carriers, private carriers or other third parties.^{7/} Equally important, use of these facilities allows the licensee to directly control maintenance, repair and restoration of its communications facilities which in turn permits the licensee to determine the priority to be given to these facilities when outages occur. For these reasons ownership and/or absolute control of such facilities is critical to ensure the uninterrupted

C. Control of Replacement Facility Construction Must Remain with Displaced Licensees

8. API also agrees with UTC that the Commission must amend its rules to clarify that while an emerging technology licensee must bear all construction costs,^{9/} the displaced incumbent 2 GHz microwave licensee must retain the absolute right to oversee all engineering, construction and testing of microwave replacement facilities.^{10/} API also agrees with UTC that the transition plan must specify that construction oversight authority includes the right of the

as other incumbent 2 GHz microwave licensees have extensive experience in microwave engineering and construction, and have established clear standards for implementation of such systems to ensure quality control. It would be unacceptable for the Commission to mandate that new technology licensees, who may have little or no experience with the engineering of private-fixed microwave systems or the technical operating requirements of such systems, have potentially harmful involvement in the actual engineering and construction of replacement facilities. Further, due to liability potential, the personnel of incumbent licensee entities must be able to closely control and supervise all persons who have access to their business installations for any purpose. Accordingly, API joins in UTC's request for clarification of the proffered rules with regard to oversight authority for replacement facility construction.

III. CONCLUSION

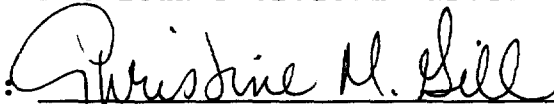
10. While API generally agrees with UTC that the Commission's proposed transition framework may prove a workable means to reallocate the 2 GHz band to emerging

minimal disruption of critical communications, the Commission's rules must be clarified. The Commission's transition rules must allow incumbent licensees to maintain control over the choice of replacement medium, specify that replacement facilities remain privately owned by incumbent licensees and ensure that replacement facilities are constructed by or under the direct supervision of incumbent licensees. Such clarification will further assure incumbent POFS licensees that they will emerge from the reallocation proceeding with adequate telecommunications capabilities.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

The American Petroleum Institute

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Its Attorneys

Dated: March 30, 1993

CERTIFICATE OF SERVICE

I, Terri Thomas, a secretary in the law firm of Keller and Heckman, do hereby certify that a copy of the foregoing Statement of Support of the American Petroleum Institute has been served this 30th day of March, 1993 by hand delivery to the following:

The Honorable James H. Quello
Acting Chairman

Cheryl A. Tritt, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554